

REMARKS

Claims 1-30 remain pending in this application. Claims 1 and 9 are independent. Claim 1 has been amended for clarity, and no claims have been added or canceled by this Amendment.

No new matter is involved with any claim amendment, as support may be found throughout the originally-filed disclosure, for example, at the paragraph starting at the bottom of page 19 and ending at the top of page 20.

I. Anticipation Rejection by Gueret '872

Withdrawal of the rejection of claims 1-3, 5-12, 14, 16, 18-21 and 24-30 under 35 U.S.C. §102(b) as allegedly being anticipated by Gueret (5,465,872) ("Gueret '872") is requested.

A. Legal Requirements for Anticipation

Applicants note that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.¹ There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.² To properly anticipate a claim, the reference must teach every element of the claim.³ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".⁴ "The identical invention must be shown in as complete detail as is contained in the ...claim."⁵ In determining anticipation, no claim limitation may be ignored.⁶ In view of the foregoing authority, the cited reference fails to anticipate independent claim 1, as amended.

¹ *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

² *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

³ See MPEP § 2131.

⁴ *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

⁵ *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

⁶ *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990).

A. Specific Deficiencies of the Applied Art with Respect to the Claims

1. Independent Claim 1

The applied art, Gueret '872, does not disclose a nozzle arrangement adapted to be fitted to a pressurized vessel or container containing an expandable fluid held under pressure in the vessel or container and to permit said expandable fluid present in said vessel or container to be dispensed therethrough under pressure, wherein the nozzle arrangement includes, *inter alia*, "a body including an inlet, an outlet, and walls which define an internal fluid flow passageway through which fluid can flow from said inlet to said outlet, one of said walls of the body comprising a resiliently deformable wall member; and wherein the body is formed of two interconnected parts, each of said parts having respective abutment surfaces which are contacted together, *one of the parts of the body having a base for mounting to the vessel or container and an actuator portion movably attached to the base and adapted, upon operation, to engage and open an outlet valve of the pressurized vessel or container to which the arrangement is attached to enable the expandable fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway*, wherein the resiliently deformable wall member defines substantially the entire length of the internal fluid flow passageway, *wherein, in response to an actuation of the actuator portion that causes fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway, the resiliently deformable wall member undergoes a resilient deformation between an initial resiliently-biased configuration in which said substantially the entire length of the internal fluid flow passageway is closed and a distended configuration that allows fluid to flow through said internal fluid flow passageway and be dispensed through the outlet, and wherein, in response to a deactivation of the actuator portion that stops fluid present in the pressurized vessel or container from being released into the internal fluid flow passageway, the resiliently deformable wall member reverts to the initial resiliently-biased configuration such that any fluid remaining in the substantially entire length of the passageway is caused to be expelled*, wherein one of the two interconnected parts comprises the resiliently deformable wall member and the other of the two interconnected parts has a corresponding wall which, together with the

resiliently deformable wall member, defines said substantially the entire length of the internal fluid flow passageway,” as recited in independent claim 1, as amended (*emphasis added*).

2. Independent Claim 9

The applied art, Guerret '872, does not disclose a nozzle arrangement adapted to be fitted to a pressurized vessel or container and to permit fluid present in said vessel or container to be dispensed through the arrangement under pressure, wherein the nozzle arrangement includes, *inter alia*, "a body including, an inlet, an outlet, an internal fluid flow passageway through which fluid can flow from said inlet to said outlet, *an actuator portion adapted, upon operation, to engage and open an outlet valve of the pressurized vessel or container to which the arrangement is attached to enable fluid present in the pressurized vessel or container to be released into the nozzle arrangement*, and wherein said body comprises a resiliently deformable wall member substantially defining the length of the fluid flow passageway, *said resiliently deformable wall member being configured: (a) to undergo a resilient deformation from an initial resiliently-biased configuration, in which the passageway is closed, to a distended configuration, in which fluid can flow through said passageway and be dispensed through the outlet when fluid is caused to flow through the nozzle arrangement in response to the operation of said actuator portion, and (b) to revert to the initial resiliently-biased configuration when the operation of the actuator portion has ceased and thereby cause any fluid remaining in the substantially entire length of the passageway to be expelled*, wherein the body comprises two interconnected parts, each of said interconnected parts having respective abutment surfaces which are contacted together, wherein portions of said respective abutment surfaces form walls of the body defining said internal fluid flow passageway, and at least one of said abutment surfaces of said portions forms said resiliently deformable wall member, and wherein a resilience of said resilient deformable wall member increases proportionally with increasing distance from the outlet,” as recited in independent claim 9, as previously presented (*emphasis added*).

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 1 and 9 are respectfully requested. In

addition, dependent claims 2-8 and 10-30 depend from patentable independent claim 1, and are submitted as being allowable at least on that basis, without further recourse to the additional patentable features recited therein.

B. Discussion of Gueret '872

According to the Abstract, Gueret '872 is purportedly directed to a product dispensing unit with movable dispensing device and cap that dispenses a product of liquid or paste consistency, and which includes a receptacle for the product consistency, and a receptacle for the product equipped with a base intended to receive a dispensing device. The base and the dispensing device have complementary securing members which enable the base and the dispensing device to be connected and disconnected. The unit also includes a cap having securing members which are identical to the securing members of the base, so that the dispensing device and the cap can be connected to form a dispensing subunit.

In Gueret '872 (and Gueret '250, discussed *infra*), the flexible wall arrangements form an outlet valve for the pump dispenser. In contrast, in Applicants' disclosed and claimed invention, the flexible wall member is provided in addition to an outlet valve of the pressurized vessel or container.

C. Discussion of Applicant's Disclosure

By way of background, an embodiment of Applicants' disclosure is directed to an outlet device for a container or vessel in which a nozzle arrangement is adapted to be fitted to a pressurized vessel and to permit fluid to be dispensed through it under pressure. The nozzle arrangement includes a body having an inlet, an outlet, an internal fluid flow passageway through which fluid can flow from the inlet to the outlet, and an actuator portion adapted, upon operation, to engage and open an outlet valve of the pressurized vessel. The nozzle arrangement further includes a resiliently deformable wall member that undergoes a resilient deformation from an initial resiliently-biased configuration to a distended configuration in response to the operation of the actuator portion, and to revert to the initial resiliently-biased configuration when the operation of the actuator portion has ceased and cause any fluid remaining in the passageway to be expelled.

In one or more embodiments, the present application is directed primarily to a nozzle arrangement for use in dispensing fluids, such as a foam or mousse, which expand when subjected to atmospheric pressure. One purpose of the inventive concept is to dispel any expandable fluid remaining in the outlet passageway of the nozzle device after actuation has ceased, so that such fluid does not continue to expand, resulting in the emission of a bead of the expandable product over time. In one or more embodiments, this is achieved by the provision of the flexible wall member which acts to expel any fluid present in the outlet passage through the outlet when actuation is ceased, and fluid is no longer being forced through the outlet passage under pressure.

Expandable fluids of this type cannot be dispensed using a manual pump type actuator as disclosed in the art cited by the Examiner because the fluid must be held in the container under pressure. In Gueret '872 (and Gueret '250, discussed *infra*), the flexible wall arrangements form an outlet valve for the pump dispenser. In contrast, in Applicants' disclosed and claimed invention, the flexible wall member is provided in addition to an outlet valve of the pressurized vessel or container.

Independent claim 1 has been amended to further distinguish over the applied art. In particular, claim 1 has been amended to recite that the nozzle arrangement is adapted to be fitted to a pressurized vessel or container "containing an expandable fluid held under pressure". Claim 1 has also been amended to recite that one of the two parts of the body comprises a base for mounting to the vessel or container and an actuator portion movably attached to the base. This recitation refers to the lower part 102 of the nozzle which has a base 201 that mounts to the container, and a centrally positioned actuator portion 202 connected to the base by a connection portion 203. Support for this amendment may be found at least at the paragraph spanning pages 19 and 20 of the present application, as filed.

Because the prior art documents all relate to manual pump type dispensers, they do not disclose an actuator portion movable to engage and open an outlet valve of the container. For example, in Gueret '872, the only movable portion of the nozzle device is the flexible dome 56 which is depressed in order to pressurize fluid contained within the dome and to force it through the outlet passageway. ***The dome is not adapted, upon operation, to engage and open an outlet***

valve of a pressurized vessel or container as claimed in claim 1. In fact, depression of the dome 56 will raise the pressure of the fluid within the dome which acts to close the valve connecting the container to the pump chamber.

As regards claim 9, this claim includes the feature that the resilience of the resilient deformable wall member increases proportionally with increasing distance from the outlet. As discussed previously, one purpose of the deformable wall in the present invention is to expel any fluid remaining in the outlet passage out through the outlet. By arranging for the resilience of the wall member to increase with distance from the outlet as claimed, the wall will tend to close first at the point furthest from the outlet with the closing motion of the remainder of the wall acting to push any fluid present in the passage towards and out of the outlet.

Applicants have searched the cited art, and have determined that no teaching or suggestion of this feature is present in any of the Gueret references relied on by the Examiner. As mentioned previously, in Gueret, the flexible wall operates as an outlet valve for the manual pump and there is no disclosure or suggestion that it should be particularly arranged to dispel fluid from the outlet passage through the outlet when it closes. Further, Gueret '872 simply states that the elasticity of the lip 54 causes it to close the outlet channel 77 when the user ceases to press on the dome 56. See Gueret '872 at col. 3, lines 44-54.

II. Unpatentability Rejection over Gueret'250 in View of Gueret '872

Withdrawal of the rejection of claims 1-30 under 35 U.S.C. §103(a) as allegedly being unpatentable over Gueret (US 5,413,250) ("Gueret '250") in view of Gueret '872 is requested. The Examiner has failed to make a *prima facie* case of unpatentability.

A. Legal Requirements for Unpatentability

At the outset, Applicant notes that, to establish a *prima facie* case of obviousness, three basic criteria offer useful insights. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.⁷ Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.⁸ The Supreme Court recently held that it is necessary, *inter alia*, for a court to look to interrelated teachings of multiple patents in order to determine whether there was an apparent reason to combine the known elements in the claimed. In this regard, the Court held "[t]o facilitate review, this analysis should be made explicit."⁹ "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."¹⁰

B. Specific Deficiencies of the Applied Art with Respect to the Claims

1. Independent Claim 1

The applied art, either alone or in combination, does not disclose, teach or suggest a nozzle arrangement adapted to be fitted to a pressurized vessel or container containing an expandable fluid held under pressure in the vessel or container and to permit said expandable fluid present in said vessel or container to be dispensed therethrough under pressure, wherein the nozzle arrangement includes, *inter alia*, "a body including an inlet, an outlet, and walls which define an internal fluid flow passageway through which fluid can flow from said inlet to said outlet, one of said walls of the body comprising a resiliently deformable wall member; and wherein the body is formed of two interconnected parts, each of said parts having respective abutment surfaces which are contacted together, ***one of the parts of the body having a base for mounting to the vessel or container and an actuator portion movably attached to the base and adapted, upon operation, to engage and open an outlet valve of the pressurized vessel or container to which the arrangement is attached to enable the expandable fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway***, wherein the resiliently deformable wall member defines substantially the entire length of the internal fluid flow

⁷ See MPEP §2143.

⁸ *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and See MPEP §2143.

⁹ *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. ____ (2007) (see p. 14).

passageway, *wherein, in response to an actuation of the actuator portion that causes fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway, the resiliently deformable wall member undergoes a resilient deformation between an initial resiliently-biased configuration in which said substantially the entire length of the internal fluid flow passageway is closed and a distended configuration that allows fluid to flow through said internal fluid flow passageway and be dispensed through the outlet, and wherein, in response to a deactivation of the actuator portion that stops fluid present in the pressurized vessel or container from being released into the internal fluid flow passageway, the resiliently deformable wall member reverts to the initial resiliently-biased configuration such that any fluid remaining in the substantially entire length of the passageway is caused to be expelled*, wherein one of the two interconnected parts comprises the resiliently deformable wall member and the other of the two interconnected parts has a corresponding wall which, together with the resiliently deformable wall member, defines said substantially the entire length of the internal fluid flow passageway,” as recited in independent claim 1, as amended (*emphasis added*).

2. Independent Claim 9

The applied art, either alone or in combination, does not disclose, teach or suggest a nozzle arrangement adapted to be fitted to a pressurized vessel or container and to permit fluid present in said vessel or container to be dispensed through the arrangement under pressure, wherein the nozzle arrangement includes, *inter alia*, "a body including, an inlet, an outlet, an internal fluid flow passageway through which fluid can flow from said inlet to said outlet, ***an actuator portion adapted, upon operation, to engage and open an outlet valve of the pressurized vessel or container to which the arrangement is attached to enable fluid present in the pressurized vessel or container to be released into the nozzle arrangement***, and wherein said body comprises a resiliently deformable wall member substantially defining the length of the fluid flow passageway, ***said resiliently deformable wall member being configured: (a) to undergo a resilient deformation from an initial resiliently-biased configuration, in which the passageway is closed, to a distended configuration, in which fluid can flow through said passageway and***

¹⁰ See *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

be dispensed through the outlet when fluid is caused to flow through the nozzle arrangement in response to the operation of said actuator portion, and (b) to revert to the initial resiliently-biased configuration when the operation of the actuator portion has ceased and thereby cause any fluid remaining in the substantially entire length of the passageway to be expelled, wherein the body comprises two interconnected parts, each of said interconnected parts having respective abutment surfaces which are contacted together, wherein portions of said respective abutment surfaces form walls of the body defining said internal fluid flow passageway, and at least one of said abutment surfaces of said portions forms said resiliently deformable wall member, and wherein a resilience of said resilient deformable wall member increases proportionally with increasing distance from the outlet,” as recited in independent claim 9, as previously presented (*emphasis added*).

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 1 and 9 are respectfully requested. In addition, dependent claims 2-8 and 10-31 depend from patentable independent claim 1, and are submitted as being allowable at least on that basis, without further recourse to the additional patentable features recited therein.

C. Discussion of Gueret '250

According to the Abstract, Gueret '250 is purportedly directed to a unit for dispensing at least one fluid product, in particular a cosmetic or pharmaceutical product, and which comprises at least one dispensing duct, each comprising at its end portion a closing system opening towards the outside. The closing system is formed by an obturator which forms part of a component made of an elastically deformable material and a seat which forms part of another component of the dispensing head. The obturator is in contact with its associated seat in the absence of any dispensing action, moving away from the seat by elastic deformation under the pressure of the product to be dispensed, and returning by elasticity into contact with the seat when the dispensing stops. The obturator is subjected to the action of a constraining element tending to keep it applied to the seat wherewith it cooperates.

In Gueret '250, the flexible wall arrangements form an outlet valve for the pump dispenser. In contrast, in Applicants' disclosed and claimed invention, the flexible wall member is provided in addition to an outlet valve of the pressurized vessel or container.

III. Conclusion

All rejections having been addressed, Applicant submits that each of pending claims 1-30 in the present application is in immediate condition for allowance. An early indication of the same would be appreciated.

In the event the Examiner believes that an interview would be helpful in resolving any outstanding issues in this case, the Undersigned Attorney is available at the telephone number indicated below.

For any fees that are due, including fees for extensions of time and for this Request for Continued Examination (RCE) please charge Deposit Account Number 03-3975 from which the Undersigned Attorney is authorized to draw. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Date: August 13, 2009

Respectfully submitted,

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Attachments: Petition for 2-Month Extension of Time
Request for Continued Examination (RCE)